IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 3974 of 2007(W)

PETITIONER:

NOORUL ISLAM EDUCATIONAL TRUST,
NICE GARDEN, ARALUMMOODU P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT,
PIN-695 123, REPRESENTED BY ITS CHAIRMAN
A.P.MAJEED KHAN.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.

RESPONDENTS:
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1. THE ASSISTANT LABOUR OFFICER,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
LABOUR DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.R.LAKSHMI NARAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 3974/2007)

PETITIONER'S EXTS.

EXT.P1 - TRUE COPY OF THE ESSENTIALITY CERTIFICATE DATED 5.4.2006 ISSUED TO THE PETITIONER BY THE STATE GOVERNMENT.

EXT.P2 - TRUE COPY OF THE LETTER DATED 12.7.2006 SENT BY THE MINISTRY OF HEALTH & FAMILY WELFARE TO THE PETITIONER.

EXT.P3 - TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 23.7.2005 ISSUED TO THE PETITIONER BY THE DISTRICT MEDICAL OFFICER OF HEALTH, THIRUVANANTHAPURAM.

EXT.P4 - TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 25.6.2005 ISSUED BY THE NEYYATTINKARA MUNICIPALITY.

EXT.P5 - TRUE COPY OF THE INSPECTION REPORT DATED 6.1.2006 PREPARED BY THE 1ST RESPONDENT.

EXT.P6 - TRUE COPY OF LETTER DATED 23.1.2006 SENT BY THE PETITIONER TO THE FIRST RESPONDENT IN REPLY TO EXT.P5.

EXT.P7 - TRUE COPY OF LETTER DATTED 25.2.2006 SENT BY THE FIRST RESPONDENT TO THE MANAGING DIRECTOR OF NIMS HOSPITAL.

EXT.P8 - TRUE COPY OF THE LETTER DATED 6.3.2006 SENT BY THE PETITIONER TO THE FIRST RESPONDENT IN REPLY TO EXT.P7.

EXT.P9 - TRUE COPY OF THE INSPECTION REPORT DATED 9.1.2007 PREPARED BY THE FIRST RESPONDENT.

NOTIFICATION PRODUCED ALONG WITH THE MEMO DATED 26.7.2007:

COPY OF G.O.(Rt.) NO.2885/2005/LBR DATED 19.10.2005.

/TRUE COPY/

K.BALAKRISHNAN NAIR &

A.K.BASHEER, JJ.

W.P.(C) NO. 3974 OF 2007-W

Dated 6th December, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a Trust, which is running a self-financing Dental College at Aralummoodu in Neyyattinkara Taluk. As part of that college, there is a Dental Hospital also. The question raised in this writ petition is regarding the applicability of the provisions of various labour laws to the said hospital.

2. The brief facts of the case are the following. The petitioner runs a Dental College, after getting all the requisite sanctions/permissions/affiliation from all the statutory authorities. It is also registered under the provisions of the Kerala Municipality (Registration of Private Hospitals and Private Paramedical Institutions) Rules, 1997, as a private hospital. While so, the Assistant Labour Officer, Neyyattinkara issued Ext.P5 inspection note, calling upon the petitioner to produce certain registers to be maintained under various labour laws, before him. The

petitioner filed Ext.P6 objection, stating that the Government of Kerala have exempted private hospitals and allied institutions from the provisions of the Kerala Shops and Commercial Establishments Act, as per the notification G.O.(Rt.) No.2885/2005/LBR dated 19.10.2005, for a period of two years. So, it was prayed that further action pursuant to the said notice may be dropped. But, the Assistant Labour Officer replied by Ext.P7 notice dated 25.2.2006, stating that the provisions of various labour laws are applicable to private hospitals also. So, the petitioner was directed to appear before him along with the registers on 1.3.2006. The petitioner again submitted Ext.P8 reply. Later, Ext.P9 inspection note was issued to the petitioner, pointing out the violations of certain labour laws committed by it. This writ petition is filed, challenging Ext.P9.

3. According to the petitioner, by virtue of the aforementioned notification issued by the Government under Section 5 of the Kerala Shops and Commercial Establishments Act, 1960 on 19.10.2005, all the provisions of the Kerala Shops and Commercial Establishments Act have been exempted, as far as private hospitals are concerned. In view of the said exemption, it is contended that the provisions of the Maternity Benefit Act, 1961 are also not applicable to private hospitals. In support of the said submission, the petitioner relied on the decision of this Court in **Thomas**

Eapen v. Asst. Labour Officer [1993(2) KLT 241]. It is a decision wherein a learned Single Judge of this Court held that the provisions of the Maternity Benefit Act are not applicable to private hospitals.

4. The 1st respondent has filed a counter affidavit, supporting the impugned action taken by him in issuing Ext.P9 inspection note. The learned Single Judge, who heard the matter found it difficult to follow the decision in **Thomas Eapen v. Asst. Labour Officer** [1993(2) KLT 241] and therefore, referred the writ petition to the Division Bench.

5. Heard. Section 5 of the Kerala Shops and Commercial Establishments Act empowers the Government to grant exemption to any establishment from all or any of the provisions of the Act, if the same is required in public interest. In this case, it is not in dispute that there was an exemption order issued by the Government on 19.10.2005 under Section 5 of the Act. The said notification reads as follows:

> "S.R.O. No.978/2005:-- In exercise of the powers conferred by Section 5 of the Kerala Shops and Commercial Establishments Act, 1960 (Act 34 of 1960) the Government of Kerala being satisfied that public interest so requires, hereby exempt the following establishments, from the provisions of the said Act for a period of two years from the date of publication of this notification in the Gazette,namely:--
>
> 1. Doctors consulting rooms.
>
> 2. Dispensaries attached to Doctor's consulting rooms.

3. Nursing Homes, Hospitals and other allied institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit."

6. The provisions of the Maternity Benefit Act, 1961 are applicable to all shops and establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed or were employed, on any day of the preceding twelve months. Section 2 of the said Act, which deals with the applicability of the provisions of the Act, reads as follows:

"2. Application of Act:--(1) It applies, in the first instance:--

(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed or were employed, on any day of the preceding twelve months:--

Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

The main part of the above sub-section was amended by Act 61/1988 with effect from 10.1.1989. It appears, earlier, there was no express provision making the provisions of the Act applicable to shops and commercial establishments. Instead, the State Government made the provisions applicable to such establishments by a notification issued under the proviso to sub-section (1) of Section 2. Now, with effect from 10.1.1989, by virtue of clause (b) of Section 2(1), the provisions of the Maternity Benefit Act are applicable to all the "shops" and "establishments" in the State of Kerala, as those terms are understood under the provisions of the Kerala Shops and Commercial Establishments Act, 1960, provided ten or more persons are employed in them as stipulated. Section 2(8) of the Kerala Shops and Commercial Establishments Act defines an establishment as follows:

> " 'establishment' means a shop or a commercial establishment."

A shop is defined under Section 2(15), which reads as follows:

> " 'shop' means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948)".

Commercial establishment is defined under Section 2(4), which reads as follows:

> " 'commercial establishment' means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishments as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of this Act, but does not include a factory to which all or any of the provisions of the Factories Act 1948 (Central Act 63 of 1948) apply."

7. It is not in dispute that a hospital is an establishment for the purposes of Section 2(8) and that is the reason, why the Government exempted it from the provisions of the said Act, by issuing a notification under Section 5. But, by virtue of Section 2(1) of the Maternity Benefit Act, private hospitals continued to be covered by the provisions of the said Act, notwithstanding the exemption of private hospitals from the operation of the provisions of the Kerala Shops and Commercial Establishments Act, 1960. Therefore, the decision in **Thomas Eapen**'s case (supra) does not lay down the correct legal position. Accordingly, it is overruled.

8. The applicability of the provisions of other labour enactments mentioned in Ext.P9 is not seriously disputed by the petitioner. Since we do not accept the contention of the petitioner that the provisions of the

Maternity Benefit Act are not applicable to private hospitals, the challenge against Ext.P9 fails. Accordingly, the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE

A.K.BASHEER, JUDGE.

Nm/